

# Amendments to Rules of Criminal Procedure Affecting District Court Procedures

Mr. Timothy Baughman, JD, Wayne County Prosecutor's Office

Mr. Mark Gates, JD, Michigan Supreme Court

Hon. Dennis Kolenda, 17<sup>th</sup> Circuit Court

## Rule Amendments Applicable to District Court – Juror Questionnaire

### Rule 2.510 Juror Personal History Questionnaire

- Conforms to 2004 PA 12 (MCL 600.1332) by striking reference to “presiding judge.

## Rule Amendments Applicable to District Court – Impaneling the Jury

### Rule 2.511 Impaneling the Jury

- Person convicted of a felony is not qualified to be a juror under Subrule (D)(1).  
(MCL 600.1307a)
- Permits the exercise of multiple peremptory challenges.

3

## Rule Amendments Applicable to District Court – Applicability of Civil Rules

### Rule 6.001 Scope; Applicability of Civil Rules; Superseded Rules and Statutes

- Makes new Rule 6.006 (Video and Audio proceedings) applicable to misdemeanor cases.
- Makes interim bail provisions of Rule 6.102 (Arrest on a Warrant) applicable to misdemeanor cases.

4

## Rule Amendments Applicable to District Court – Speedy Trial

### Rule 6.004 Speedy Trial

#### (A) Right to Speedy Trial

- Addition by the court; simply makes clear that the remedy for a constitutional violation is dismissal

#### (C) Delay in Felony and Misdemeanor Cases

- Adds to the ROR release provision (the “180-day” bond rule that ROR may be overcome by clear and convincing evidence showing that some other form of release is required to insure the safety of the public or the appearance of the defendant, as contained in MCL 765.6.

#### (D) Untried Charges Against State Prisoner.

- Substitutes the language of the statute. This will lead to different results in some situations

5

## Rule Amendments Applicable to District Court – Assistance of Lawyer

### Rule 6.005 Right to Assistance of Lawyer; Advice; Appointment for Indigents; Waiver; Joint Representation; Grand Jury Proceedings

#### (E) Advice at Subsequent Proceedings.

The court may refuse to adjourn a proceeding to appoint counsel or allow a defendant to retain counsel if an adjournment would significantly prejudice the prosecution, and the defendant has not been reasonably diligent in seeking counsel.

6

## Rule Amendments Applicable to District Court – Video & Audio Proceedings

### Rule 6.006 Video and Audio Proceedings

(A) Defendant at a Separate Location. District and circuit courts may use two-way interactive video technology to conduct the following proceedings between a courtroom and a prison, jail, or other location: initial arraignment on the warrant, arraignments on the information, pretrials, pleas, sentencing for misdemeanor offenses, show cause hearings, waivers and adjournments of extradition, referrals for forensic determination of competency, and waivers and adjournments of preliminary examinations.

## Rule Amendments Applicable to District Court - Video & Audio Proceedings (continued)

### Rule 6.006 Video and Audio Proceedings (continued)

(B) Defendant in the Courtroom – Preliminary Examinations. As long as the defendant is either present in the courtroom or has waived the right to be present, on motion of either party, district courts may use telephonic, voice, or video conferencing, including two-way interactive video technology, to take testimony from an expert witness or, upon a showing of good cause, any person at another location in a preliminary examination.

## Rule Amendments Applicable to District Court - Video & Audio Proceedings (continued)

Rule 6.006      Video and Audio Proceedings

- (C) Defendant in the Courtroom – Other Proceedings. As long as the defendant is either present in the courtroom or has waived the right to be present, upon a showing of good cause, district and circuit courts may use two-way interactive video technology to take testimony from a person at another location in the following proceedings:

9

## Rule Amendments Applicable to District Court - Video and Audio Proceedings (continued)

Rule 6.006      Video and Audio Proceedings

- (C) (continued)
- (1) evidentiary hearings, competency hearings, sentencings, probation revocation proceedings, and proceedings to revoke a sentence that does not entail an adjudication of guilt, such as youthful trainee status;
- (2) with the consent of the parties, trials. A party who does not consent to the use of two-way interactive video technology to take testimony from a person at trial shall not be required to articulate any reason for not consenting.

10

## Rule Amendments Applicable to District Court - Video and Audio Proceedings (continued)

### Rule 6.006 Video and Audio Proceedings (continued)

- (D) Mechanics of Use.
- The use of telephonic, voice, video conferencing, or two-way interactive video technology, must be in accordance with any requirements and guidelines established by the State Court Administrative Office, and all proceedings at which such technology is used must be recorded verbatim by the court.

11

## Rule Amendments Applicable to District Court - Summary of Video & Audio Proceedings Changes

### Rule 6.006 Video and Audio Proceedings

- New Rule replacing AO 2000-3.
- Allows for the use of two-way interactive video technology to conduct certain proceedings without a showing of good cause, even if the defendant is not in the courtroom.
- Allows for the use of telephonic, voice, or video conferencing, including two-way interactive video technology, to take testimony from an expert witness without a showing of good cause, or from any other witness with a showing of good cause, at a preliminary examination, if defendant is in the courtroom or has waived the right to be present. (MCL 766.11a)

12

## Rule Amendments Applicable to District Court - Summary of Video & Audio Proceedings Changes

### Rule 6.006 Video and Audio Proceedings

- Allows for the use of two-way interactive video technology to take testimony of a witness at certain proceedings with a showing of good cause, if defendant is in the courtroom or has waived the right to be present.
- Allows for the use of two-way interactive video technology to take testimony of a witness at a trial with a showing of good cause and with the consent of the parties, if defendant is in the courtroom or has waived the right to be present.
- Must be done in accordance with any SCAO requirements and guidelines and proceedings must be recorded verbatim by the court.

13

## Rule Amendments Applicable to District Court — Arrest on Warrant

### Rule 6.102 Arrest On Warrant

- Adds the phrase “Where permitted by law” to Subrule (D) because MCL 780.582a prohibits the release of a person on an interim bond in domestic violence cases.

14

## Rule Amendments Applicable to District Court — Arraignment on Warrant or Complaint

### Rule 6.104 Arraignment on the Warrant or Complaint

- Amendments are technical in nature.

15

## Rule Amendments Applicable to District Court — PreTrial Release

### Rule 6.106 Pretrial Release

#### (D) Conditional Release

- Allows a court to require that a person comply with a condition of release limiting or prohibiting contact with any other named person.
- Provides that if such a condition conflicts with another court order, the most restrictive provision of each order takes precedence over the other order.

#### (E) Money Bail

- Modified to comply with MCL 766.7.

16

## Rule Amendments Applicable to District Court — PreTrial Release (continued)

### Rule 6.106 Pretrial Release

#### (G) Custody Hearing

- Modified to allow prosecutor to request a custody hearing.

#### (I) Termination of Release Order

- Modified to comply with MCL 766.7.

17

## Rule Amendments Applicable to District Court — Preliminary Examination

### Rule 6.110 Preliminary Examination

“Good cause” still required for  
adjournment, even if parties consent

- The cumbersome “timeliness” preservation rules are eliminated in favor of a harmless error rule in paragraph (B)

18

## Rule Amendments Applicable to District Court – Circuit Court Arraignment in District Court

### Rule 6.111 Circuit Court Arraignment in District Court

(A) “If the defendant, the defense attorney, and the prosecutor consent on the record, the circuit court arraignment may be conducted and a plea of not guilty, guilty, nolo contendere, guilty but mentally ill, or not guilty by reason of insanity may be taken by a district judge in criminal cases cognizable in the circuit court immediately after the bindover of the defendant. Following a plea, the case shall be transferred to the circuit court where the circuit judge shall preside over further proceedings, including sentencing.”

19

## Rule Amendments Applicable to District Court - Circuit Court Arraignment in District Court (continued)

### Rule 6.111 Circuit Court Arraignment in District Court (continued)

- (B) Arraignments conducted pursuant to this rule shall be conducted in conformity with MCR 6.113.
- (C) Pleas taken pursuant to this rule shall be taken in conformity with MCR 6.301, 6.302, 6.303, and 6.304, as applicable, and, once taken, shall be governed by MCR 6.310.
- (D) Each court intending to utilize this rule shall submit a local administrative order to the State Court Administrator pursuant to MCR 8.112(B) to implement the rule.

20

# Rule Amendments Applicable to District Court — Information or Indictment

## Rule 6.112 The Information or Indictment

- (B) Use of Information or Indictment. A prosecution must be based on an information or an indictment. Unless the defendant is a fugitive from justice, the prosecutor may not file an information until the defendant has had or waives a preliminary examination. An indictment ~~may be~~ is returned and filed ~~before a defendant's without a preliminary examination.~~ When this occurs, the indictment ~~may substitute for the complaint and shall~~ commence judicial proceedings.
- (F) Notice of Intent to Seek Enhanced Sentence. A notice of intent to seek an enhanced sentence pursuant to MCL 769.13 must list the prior convictions that may be relied upon for purposes of sentence enhancement. The notice must be filed within 21 days after the ~~defendant is arraigned or has waived arraignment on the information charging the underlying felony, or before trial begins, if the defendant is tried within the 21-day period~~ defendant's arraignment on the information charging the underlying offense or, if arraignment is waived, within 21 days after the filing of the information charging the underlying offense.

21

# Rule Amendments Applicable to District Court — Arraignment on Indictment or Information

## Rule 6.113 Arraignment on Indictment or Information

- (D) Preliminary Examination Transcript. ~~Unless the defendant pleads guilty at the arraignment or the parties otherwise agree, the court must order the~~ The court reporter to shall transcribe and file the record of the preliminary examination if such is demanded or ordered pursuant to MCL 766.15. The order must also provide for the payment of the reporter's fees.
- (E) Elimination of Arraignments. A circuit court may submit to the State Court Administrator pursuant to MCR 8.112(B) a local administrative order that eliminates arraignment for a defendant represented by an attorney, provided other arrangements are made to give the defendant a copy of the information.

22

# Rule Amendments Applicable to District Court — Plea of Guilty or Nolo Contendere

## Rule 6.302 Plea of Guilty or Nolo Contendere

- (B) An Understanding Plea. Speaking directly to the defendant or defendants, the court must advise the defendant or defendants of the following and determine that ~~the~~ each defendant understands:
- (1) the name of the offense to which the defendant is pleading; the court is not obliged to explain the elements of the offense, or possible defenses;
  - (2) the maximum possible prison sentence for the offense and any mandatory minimum sentence required by law;

23

# Rule Amendments Applicable to District Court — Plea of Guilty or Nolo Contendere (continued)

## Rule 6.302 Plea of Guilty or Nolo Contendere (continued)

### (B) An Understanding Plea.

- (3) if the plea is accepted, the defendant will not have a trial of any kind, and so gives up the rights the defendant would have at a trial, including the right:
  - (a) to be tried by a jury;
  - ~~(b) to be tried by the court without a jury, if the defendant chooses and the prosecutor and court consent~~

24

## Rule Amendments Applicable to District Court - Plea of Guilty or Nolo Contendere (continued)

### Rule 6.302 Plea of Guilty or Nolo Contendere (continued)

#### (B) An Understanding Plea.

- ~~(e)~~(b) to be presumed innocent until proved guilty;
- ~~(d)~~(c) to have the prosecutor prove beyond a reasonable doubt that the defendant is guilty;
- ~~(e)~~(d) to have the witnesses against the defendant appear at the trial;
- ~~(f)~~(e) to question the witnesses against the defendant;
- ~~(e)~~(f) to have the court order any witnesses the defendant has for the defense to appear at the trial;
- ~~(h)~~(g) to remain silent during the trial;
- ~~(i)~~(h) to not have that silence used against the defendant; and
- ~~(j)~~(i) to testify at the trial if the defendant wants to testify.

25

## Rule Amendments Applicable to District Court - Plea of Guilty or Nolo Contendere (continued)

### Rule 6.302 Plea of Guilty or Nolo Contendere

#### (B) An Understanding Plea. (continued)

The requirements of this section may be satisfied by a writing on a form approved by the State Court Administrator. If a court uses a writing, the court shall address the defendant and obtain from the defendant orally on the record a statement that the rights were read and understood and a waiver of those rights. The waiver may be obtained without repeating the individual rights.

- (4) if the plea is accepted, the defendant will be giving up any claim that the plea was the result of promises or threats that were not disclosed to the court at the plea proceeding, or that it was not the defendant's own choice to enter the plea;
- (5) any appeal from the conviction and sentence pursuant to the plea will be by application for leave to appeal and not by right.

26

## Rule Amendments Applicable to District Court — Plea of Guilty but Mentally Ill

### Rule 6.303 Plea of Guilty but Mentally Ill

- The only change is to conform to statute, which now places the burden of proof of insanity on the defendant. For a plea of GBMI, then, it is not necessary for the court to find that the defendant was not insane.

27

## Rule Amendments Applicable to District Court — Plea of Not Guilty by Reason of Insanity

### Rule 6.304 Plea of Not Guilty by Reason of Insanity

- Again, the change is a correction to conform subparagraph (C) (2) to the statute shifting the burden of proof of insanity to the defendant.

28

## Rule Amendments Applicable to District Court — Withdrawal or Vacation of Plea

Rule 6.310 Withdrawal or Vacation of Plea ~~Before Acceptance or Sentence~~

(B) Withdrawal After Acceptance but Before Sentence. ~~On After acceptance but before sentence.~~

(1) a plea may be withdrawn on the defendant's motion or with the defendant's consent, ~~the court only~~ only in the interest of justice, ~~may permit an accepted plea to be withdrawn before sentence is imposed unless~~ and may not be withdrawn if withdrawal of the plea would substantially prejudice the prosecutor because of reliance on the plea. If the defendant's motion is based on an error in the plea proceeding, the court must permit the defendant to withdraw the plea if it would be required by ~~MCR 6.311(B)~~ subrule (C).

29

## Rule Amendments Applicable to District Court — Withdrawal or Vacation of Plea (continued)

Rule 6.310 Withdrawal or Vacation of Plea ~~Before Acceptance or Sentence~~

(2) the defendant is entitled to withdraw the plea if

- (a) the plea involves a prosecutorial sentence recommendation or agreement for a specific sentence, and the court states that it is unable to follow the agreement or recommendation; the trial court shall then state the sentence it intends to impose, and provide the defendant the opportunity to affirm or withdraw the plea; or
- (b) the plea involves a statement by the court that it will sentence to a specified term or within a specified range, and the court states that it is unable to sentence as stated; the trial court shall provide the defendant the opportunity to affirm or withdraw the plea, but shall not state the sentence it intends to impose.

30

## Rule Amendments Applicable to District Court - Withdrawal or Vacation of Plea (continued)

Rule 6.310 Withdrawal or Vacation of Plea ~~Before Acceptance or Sentence~~

- (C) Motion to Withdraw Plea After Sentence. The defendant may file a motion to withdraw the plea within 6 months after sentence. Thereafter, the defendant may seek relief only in accordance with the procedure set forth in subchapter 6.500. If the trial court determines that there was an error in the plea proceeding that would entitle the defendant to have the plea set aside, the court must give the advice or make the inquiries necessary to rectify the error and then give the defendant the opportunity to elect to allow the plea and sentence to stand or to withdraw the plea. If the defendant elects to allow the plea and sentence to stand, the additional advice given and inquiries made become part of the plea proceeding for the purposes of further proceedings, including appeals.

31

## Rule Amendments Applicable to District Court - Judgment

### Rule 6.427 Judgment

- Amendments are technical in nature

32

## Rule Amendments Applicable to District Court – Probation Revocation

### Rule 6.445 Probation Revocation

- Amendments are technical in nature.

33

## Rule Amendments Applicable to District Court - Pretrial

### Rule 6.610 Criminal Procedure Generally

#### (B) Pretrial

- Gives the court the authority to compel both the defendant and defendant's attorney to appear for a pretrial conference.

34

## Rule Amendments Applicable to District Court — Arraignment; District Court Offenses

### Rule 6.610 Criminal Procedure Generally

#### (D) Arraignment; District Court Offenses

- Modified to more accurately reflect the holding of the United States Supreme Court in *Shelton v Alabama*, 535 US 654, 122 S Ct 1764 (2002).

35

## Rule Amendments Applicable to District Court — Pleas of Guilty & Nolo Contendere

### Rule 6.610 Criminal Procedure Generally

#### (E) Pleas of Guilty and Nolo Contendere.

- Modified to more accurately reflect the holding of the United States Supreme Court in *Shelton, supra*.
- Modified to allow the trial rights to be given to multiple defendants at once and require the questioning of the defendant regarding any threats or promises to obtain the plea.

36

## Rule Amendments Applicable to District Court — Pleas of Guilty & Nolo Contendere

### Rule 6.610 Criminal Procedure Generally

#### (E) Pleas of Guilty and Nolo Contendere.

- Clarifies that if there is a plea in writing without the personal appearance of the defendant, a factual basis need not be obtained and that the defendant may waive his or her trial rights in writing.

37

## Rule Amendments Applicable to District Court - Sentencing

### Rule 6.610 Criminal Procedure Generally

#### (F) Sentencing

- Reinserts and further clarifies language removed from Subrule (E).

38

## Rule Amendments Applicable to District Court — Motion for New Trial

### Rule 6.610 Criminal Procedure Generally

#### (G) Motion for New Trial.

- Formerly Subrule (H)

39

## Rule Amendments Applicable to District Court Arraignment; Circuit Court Offenses Not Cognizable by the District Court

### Rule 6.610 Criminal Procedure Generally

#### (H) Arraignment; Circuit Court Offenses Not Cognizable by the District Court.

- Formerly Subrule (G).
- Makes explicit a common practice of allowing the waiver of the reading of the complaint and warrant.

40

## Rule Amendments Applicable to District Court —Misdemeanor Traffic Cases

### Rule 6.615 Misdemeanor Traffic Cases

- Strikes provision prohibiting a single citation from alleging both a misdemeanor and a civil infraction.
- Strikes requirement that a sworn complaint be filed before the issuance of an arrest warrant for failure to appear on a misdemeanor traffic citation.

41

## Rule Amendments Applicable to District Court —Misdemeanor Traffic Cases

### Rule 6.615 Misdemeanor Traffic Cases

- Strikes the requirement that a case be dismissed with prejudice if a citation is not signed and filed on paper when required by the court.

42

## Rule Amendments Applicable to District Court — Impaneling the Jury

### Rule 6.620 Impaneling the Jury

- Makes the rule regarding peremptory challenges consistent with the felony rule.

43

## Rule Amendments Applicable to District Court — Impaneling the Jury

### Rule 6.620 Impaneling the Jury

- Provides that where there are multiple defendants being tried jointly, the prosecutor gets the same number of peremptory challenges as all of the defendants combined.
- Allows the judge to grant additional peremptory challenges.

44

## Rule Amendments Applicable to District Court — Appeal; Appointment of Lawyer

### Rule 6.625 Appeal; Appointment of Lawyer

- Eliminates the conflict with ruling of the United States Supreme Court decision in *Halbert v Michigan*, 545 US \_\_\_\_; 125 S Ct 2582; 162 L Ed 2d 552 (2005).

45

## Rule Amendments Applicable to District Court

- Session Wrap Up and Evaluation

46